

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
05-CR-231A

ANN CAIN AND DAVID CAIN, SR.,

Defendants.

Jury selection for trial of this matter is scheduled for September 11, 2006 at 9:30 a.m. Accordingly, a final pretrial conference is scheduled in this matter for September 7, 2006 at 2:30 p.m. On or before September 5, 2006, counsel for the government and the defendants are to provide the Court with two sets of the required submissions listed below. One set of the required submissions should be filed in the Clerk's office and the other should be brought directly to the Court's chambers. Each submission should be filed under separate cover.

1. JURY INSTRUCTIONS: The government and defendants must supply copies of their requested charges on the substantive issues. Each party should also include a computer disk containing the charge with the set of submissions sent to chambers. Each charge is to be on a separate sheet of

paper, in standard form, and contain citations to the authority for the charge. The proposed charges shall be taken from the most recent edition of L. Sand, et al., Modern Federal Jury Instructions, unless a suitable charge is not included in Sand. In that case, the parties may submit an alternative charge, as long as it is supported by legal authority. The charges are to be presented in a logical sequence, and this submission should include an index to the charges.

The Court will use these charges to help formulate its own charge. If counsel fails to submit a charge, that charge will not be considered by the Court.

2. PRETRIAL BRIEFS OR OTHER MEMORANDA: The government shall submit a memorandum of law outlining the facts and legal arguments to be made. The defendants may also file a memorandum either in response to the government's submission or concerning their own issues. The memorandum shall include any issues that the Court should consider in order to expedite the trial, as well as any unusual or recurring issues, such as evidentiary issues, that may arise at trial. Any party wishing to make a motion in limine should include such a motion, along with legal authority, as part of this submission.

3. EXHIBITS: Each party shall submit a list of exhibits it anticipates using at trial. The exhibits must be pre-marked numerically and any sub-exhibits should be pre-marked alphabetically, pursuant to Rule 26 of the U.S. District Court for the Western District of New York Local Rules of Criminal Procedure.

The parties shall use the Court's form, copy of which is attached, in preparing the exhibit list. Failure to list an exhibit may result in preclusion of that exhibit at trial. Common exhibits should be included only on the government's exhibit list unless otherwise ordered by the Court.

Two copies of each documentary exhibit shall be provided to the Court at the pretrial conference. Each set of copies shall be "tabbed" for reference and bound in a three-ring binder or in a similar fashion.

4. VOIR DIRE: Each party may submit up to ten proposed voir dire questions relating to any questions of law or fact that will be relevant to issues to be tried. Additional questions will be considered only upon a showing of good cause. The Court will conduct the voir dire.

5. WITNESS LIST: Each party must submit the names and addresses (identifying city and state only) of all prospective witnesses and a brief summary of their anticipated testimony, including the anticipated date and length of their testimony. The list must include rebuttal witnesses, but their anticipated testimony need not be summarized. Failure to meet these requirements with respect to any witness may result in preclusion of testimony by that witness.

6. EXPERT TESTIMONY: The identity, addresses (identifying town and state only), and a brief summary of the qualifications and testimony of all expert witnesses are to be supplied. Counsel may enter into a written stipulation prior to the pretrial conference setting forth the qualifications of each expert

witness. Failure to include an expert witness on the expert witness list may result in preclusion of testimony by that witness.

7. SUMMARY OF CHARGES: Each party shall submit proposed summaries of the charges in the Indictment. These summaries may be used by the Court in lieu of reading the entire Indictment during jury selection and in the preliminary instructions to the jury.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: August 25 , 2006

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